

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RONALD HELMUT WAGNER,

Petitioner,

v.

MICHAEL MEISNER, Warden,
Columbia Correctional Institution,

Respondent.

ORDER

12-cv-487-wmc

On February 7, 2014, the court granted respondent's motion to dismiss the federal habeas corpus petition filed by Ronald Helmut Wagner after concluding that review was barred by the governing one-year statute of limitations. Wagner's time to appeal that decision expired on March 9, 2014. *See* Fed. R. App. P. 4(a)(1)(A). Noting that he did not receive notice of the decision until March 17, Wagner has now filed a motion to reopen the time to appeal. (Dkt. # 40). The motion will be granted.

Pursuant to Fed. R. App. P. 4(a)(6), a district court may reopen the time to file an appeal for a brief period of time (14 days) only if all of the following conditions are satisfied:

- A. the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of judgment or order sought to be appealed within 21 days after entry;
- B. the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and
- C. the court finds that no party would be prejudiced.

FED. R. APP. P. 4(a)(6). Wagner does not meet the first criteria because he does not demonstrate that he failed to receive notice of the judgment. In that respect, the clerk's office sent notice of the order entering judgment in favor of respondent and dismissing the petition to Wagner by regular mail at his address of record on February 7, 2014. It was not returned undeliverable. Although Wagner was transferred recently from the Red Granite Correctional Institution to the Columbia Correctional Institution, he reports that the transfer did not take place until several weeks later on February 26, 2014. (Dkt. # 36). Thus, he provides no support for his bare assertion that the order was not delivered as sent.

The court is entitled to presume that orders sent by regular mail are delivered to the recipient to whom it was addressed. *See Dakaj v. Holder*, 580 F.3d 479, 482 (7th Cir. 2009); *see also Bobbitt v. Freeman Co.*, 268 F.3d 535, 538 (7th Cir. 2001) ("The law presumes timely delivery of a properly addressed piece of mail.") (citing *McPartlin v. Commissioner*, 653 F.2d 1185, 1191 (7th Cir. 1981)); *Beck v. Somerset Technologies, Inc.*, 882 F.2d 993, 996 (5th Cir. 1989) ("Proof that a letter properly directed was placed in a U.S. Post office mail receptacle creates a presumption that it reached its destination in the usual time and was actually received by the person to whom it was addressed."). In other words, evidence of proper mailing raises a rebuttable presumption of delivery. *Laouini v. CLM Freight Lines, Inc.*, 586 F.3d 473, 476 (7th Cir. 2009); *see also Vincent v. City Colleges of Chicago*, 485 F.3d 919, 922 (7th Cir. 2007) ("Evidence of mailing is evidence of delivery.") (citing *Hagner v. United States*, 285 U.S. 427 (1932); *Henderson v. Carbondale*

Coal & Coke Co., 140 U.S. 25 (1891)); *In re Nimz Transp., Inc.*, 505 F.2d 177, 179 (7th Cir. 1974) (“[A] timely and accurate mailing raises a rebuttable presumption that the mailed material was received[.]”). An uncorroborated, self-serving denial of receipt, even if sworn, is insufficient to overcome the presumption of regular delivery by mail. *Dakaj*, 580 F.3d at 482; *Gurung v. Ashcroft*, 371 F.3d 718, 722 (10th Cir. 2004); *In re Eagle Bus Mfg.*, 62 F.3d 730, 735 (5th Cir. 1995). Because Wagner’s bare assertion of non-receipt is not enough to satisfy the requirement found in Fed. R. App. P. 4(a)(6)(A), his motion to reopen must be denied.

ORDER

IT IS ORDERED that petitioner Ronald Helmut Wagner’s motion to reopen the time to appeal (dkt. # 16) is DENIED.

Entered this 10th day of April, 2014.

BY THE COURT:

WILLIAM M. CONLEY
District Judge